



**Hawai'i
Association of
REALTORS**
www.hawaiiirealtors.com

The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaiiirealtors.com

February 24, 2011

The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
State Capitol, Room 308§
Honolulu, Hawaii 96813

LATE TESTIMONY

RE: H.B. 1306, H.D. 1, Relating to Housing

Aloha Chair Oshiro, Vice Chair Lee and members of the Committee:

I am Craig Hirai, Chair of the Subcommittee on Affordable Housing, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR would like to make the following **comments** with respect to H.B. 1306, Relating to Housing, which: (a) deletes language allowing county affordable housing projects to have the same General Excise Tax ("GET") exemptions as the Hawaii Housing Finance and Development Corporation ("HHFDC"); (b) requires all GET exemption claims to be filed with HHFDC and reviewed by HHFDC and the Department of Taxation ("DoTax") prior to certification; (c) requires renewal certification every four years and an audit of each certification; and (d) requires an annual report to the Legislature.

Section 2 of H.B. 1306, H.D. 1, amends HRS §201H-36(b) to provide that all GET exemption claims to be filed with HHFDC and reviewed by HHFDC and DoTax prior to certification. The Hawaii Administrative Rules under HRS §237-29(c) currently provide for initial applications for the certification of newly constructed or rehabilitated for sale housing projects (HAR §15-306-12) and initial and annual rental income certifications for newly constructed or rehabilitated rental housing projects (HAR §15-306-13). The rules also provide for the filing of additional claims for exemption for contractors, subcontractors, material houses, real estate sales agencies, or other firms involved with the planning, design, financing, construction, or sale of a housing project. HAR therefore recommends that:

- (i) Only initial claims for an exemption under HRS §201H-36(b) for newly constructed, or moderately or substantially rehabilitated projects, and all claims for annual rental income certification should be filed with the HHFDC and reviewed by DoTax prior to certification by the HHFDC (as opposed to the claim forms for every project vendor).
- (ii) Other claims for an exemption under HRS §201H-36(b) would be filed with the HHFDC and forwarded to DoTax.





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- (iii) All claims certified under HRS §201H-36(b) may be audited by the Office of the Auditor as directed by the legislature (assuming that H.B. 382, H.D. 1, which this committee is hearing today on a later agenda becomes law).

Section 2 of H.B. 1306, H.D. 1, also amends HRS §201H-36(b) to provide that all funds collected from claims that do not meet the requirements for an exemption, as determined by a review by the HHFDC and DoTax, shall be deposited into the Rental Housing Trust Fund. It is unclear how such funds will materialize without an audit and possible collection action by DoTax and why such funds, if collected would not inure to the General Fund as do all other GET collections. HAR therefore recommends that this provision be deleted from H.B. 1306, H.D. 1.

Section 2 of H.B. 1306, H.D. 1, amends HRS §201H-36(c) to provide that all records maintained by the HHFDC under HRS §201H-36 shall be public records and shall be made available upon request (except for proprietary information which shall not be made available). HAR questions whether this amendment will expose HHFDC employees to possible criminal misdemeanor charges under HRS §237-34(b) and recommends that you consider the following language which is based on the disclosure by qualified high technology businesses under former HRS §235-110.9(b).

By claiming an exemption under this section in accordance with section 237-29, a taxpayer consents to the public disclosure of the taxpayer's name and status as a claimant under this section and section 237-29.

Section 2 of H.B. 1306, H.D. 1, amends HRS §201H-36(d) to divert the deposit of the HHFDC's service fee from the dwelling unit revolving fund to rental housing trust fund. Because these fees fund the staffing of the review process contemplated under H.B. 1306, H.D. 1, HAR recommends that HRS §201H-36(d) be amended to read as follows:

The corporation and the department of taxation may each establish, revise, charge, and collect a reasonable service fee, as necessary, in connection with its approvals and certifications under this section. The fees shall be deposited into the dwelling unit revolving fund in the case of the corporation and into the tax administration special fund in the case of the department of taxation.

Because Section 1 of H.B. 1306, H.D. 1, amends HRS §46-15.1(a) to delete language allowing county affordable housing projects to have the same GET exemptions as the HHFDC, HAR recommends that in order to avoid any unintended consequences, a new subsection be added to HRS §201H-36 to read as follows:



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All housing projects with an initial claim for an exemption as a newly constructed, or moderately or substantially rehabilitated project, which was certified by a county under section 46-15.1 prior to January 1, 2012, shall be subject to the provisions of this section and section 237-29 in accordance with the income and development criteria previously certified by the county.

HAR further believes that in order to ensure continuing compliance, a new section should be added to H.B. 1306, H.D. 1, amending HRS §237-29(a) to read as follows:

“(a) All gross income received by any qualified person or firm for the planning, design, financing, construction, sale, or lease in the State of a housing project that has been certified or approved under section 201H-36 shall be exempt from general excise taxes; provided, however, that if the planning, design, financing or construction of a rental housing project is certified for exemption under this section, the annual exemption of the rental income of the project under this chapter shall also be subject to the provisions of this section and section 201H-36.”

Section 4 of H.B. 1306, H.D. 1, provides that upon its approval the bill shall apply to taxable years beginning after December 31, 2010. HAR believes that H.B. 1306, H.D. 1, should not be retroactive inasmuch as projects may be certified in 2011 before the bill becoming law, and that the bill should therefore apply to taxable years beginning after December 31, 2011.

Mahalo for the opportunity to testify.

